IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

Crl.MC.No. 661 of 2004(D)

CC.59/2004 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHENGANNUR

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PETITIONER:

ELIZABETH JOHN, W/O. JOHN PHILIP,
KALLEMPARAMPIL RICHOOS GARDEN, ANGADICKAL SOUTH PO
CHENGANNUR.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI C.M. KAMMAPPU.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.APPL.NO.3112/2004 IN CRL.M.C. NO.661/2004

DISMISSED.

7-11-2007. SD/- V.K.MOHANAN, JUDGE.

//TRUE COPY//

V.K.MOHANAN, J.

CRL.M.C. NO.661 OF 2004

Dated 7th November 2007.

ORDER

The petitioner herein is the 2nd accused in C.C.No.59/2004 on the file of the Judicial Magistrate of the First Class-II, Chengannoor. According to the petitioner, she is falsely implicated in the crime due to personal ill-will and hence, approached this court by filing the Crl.M.C to quash all the proceedings in C.C.59/2004 pending against her.

2. The prosecution case is that at 2.30 p.m. on 30-10-2003, the accused 2 in number, trespassed into the property of the de facto complainant and the Ist accused caught hold of the heir of the de facto complainant and the accused, wrongfully restrained her and thereafter the Ist accused assaulted on her cheeks. On the basis of the F.I.Statement given by the de facto complainant, crime No.631/2003 was registered in the Chengannur police station for the offences punishable under sections 447, 341, 323,

324 and 506(i) read with 34 of I.P.C. After investigation, final report i.e., annexure -III was filed by the police on the basis of which cognizance was taken by the court below and instituted C.C.No.59/2004 for the above offences. According to the petitioner, there was a family dispute with regard to the partition of the family property which led to filing of O.S.No.199/90 in the Munsiff's Court, Chengannur. The suit was decreed allowing partition and the shares of the parties are lying adjacent. According to the petitioner, the de facto complainant and her husband wanted to have the shares of the petitioner's husband and Susamma Varghese and thus after the partition, the de facto complainant is not in good terms with the petitioner and Susamma Varghese, thus according to the petitioner, the case was foisted because of the cold war between the de facto complainant and the petitioner and others. Along with the Crl.M.C., a copy of the F.I.R in Crime 631/2003 is produced as Annexure I. Annexure 2 is the accident register cum would certificate and annexure III is the Final Report. On the basis of the above documents and the factual situation of the case in

hand, the counsel for the petitioner submits that no offence is disclosed against the petitioner. Even if the entire allegations are admitted as true, according to him, all those allegations are against Ist accused and there is nothing against the petitioner. Therefore, he submits that all proceedings pending against the petitioner in the above case may be quashed.

3. I have heard the learned counsel appearing for the petitioner as well as the Public Prosecutor.

4. On the basis of the above documents, the counsel strenuously argued that absolutely there is no allegation against the petitioner to attract any of the offences alleged against her. Pointing out the statement contained in the F.I.Statement, the counsel submits that even according to the de facto complainant, the accused were going to the adjacent property and the whole incident, even if it is admitted as correct, took place only at the instance of the de facto complainant. It is further argued that all the allegations are against the Ist accused and there is nothing against the petitioner/2nd accused. It is the case of the

petitioner that she was made an accused only to put pressure on the Ist accused and other family members to obtain the property of the Ist accused. It is also one of the grounds advanced by the counsel for the petitioner that there is inordinate delay in lodging the F.I.S. before the police. According to him, the incident took place on 30-10-2003, the F.I.S. was alleged to have lodged only on 3-12-2003 and there is delay in registering the F.I.R. Thus according to the counsel for the petitioner, no offence will lie against the petitioner.

5. Resisting the submission made by the counsel for the petitioner, the learned Public Prosecutor submitted that the incident took place in the courtyard of the de facto complainant and the investigation proved that the accused have committed the offences alleged against them. In this respect, it is relevant to note that at the first part of the incident, though no overt act is alleged against the petitioner, a common intention is attributed. Considering the nature of allegation contained in the F.I.R. as well as in the final report, I am of the view that the correctness and

the sufficiency of the allegations are to be appreciated on the basis of evidence during the trial of the case. Of course, if the petitioner has got a case that no offence is disclosed against the petitioner, the same can be raised at the time of trial at appropriate time.

6. Yet another contention raised by the counsel for the petitioner is that there is inordinate delay in lodging the F.I.S. and registering the crime. The explanation given by the de facto complainant are to be appreciated during the time of trial and it is for the trial court to come into a conclusion whether the delay was satisfactorily explained or the delay has prejudiced the accused/petitioner. In the light of the above discussion I am not inclined to interfere with the proceedings pending before the court below against the petitioner. The learned counsel appearing for the petitioner submitted that being a lady, the petitioner may be exempted from personal appearance.

7. In the facts and circumstances involved in the case, I am of opinion that the said request deserves consideration and if the petitioner makes an application to

the court below for exemption, the same shall be considered by the court below positively. If a plea of discharge is taken, the same shall also be considered by the court below on merit.

In the light of the above discussion, I am of the view that the Crl.M.C. is devoid of merits and the same is dismissed but subject to the above observation.

V.K.MOHANAN, JUDGE.

kvm/-

V.K.MOHANAN, J.

No....

Judgment/Order

Dated: